

Montana Water Court
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FILED
04/12/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
39F-0429-R-2022
Stern, Anika
14.00

**IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
LITTLE MISSOURI RIVER ABOVE LITTLE BEAVER CREEK – BASIN 39F
PRELIMINARY DECREE**

CLAIMANTS: Edward Lawrence; Mary Lawrence

OBJECTOR: National Park Service Water Resources
Division

CASE 39F-0429-R-2022

39F 211856-00

39F 211857-00

39F 212016-00

39F 212017-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Mary Lawrence and Edward Lawrence are the record owners of claims 39F 211856-00, 39F 211857-00, 39F 212016-00, and 39F 212017-00.

2. Claims 39F 211856-00, 39F 211857-00, 39F 212016-00, and 39F 212017-00 were decreed with DNRC issue remarks. All issue remarks must be resolved.

3. The United States of America (National Park Service) objected to claims 39F 211856-00, 39F 211857-00, 39F 212016-00, and 39F 212017-00.

4. On March 27, 2023, the parties filed a Stipulation. (Doc. 12.00)¹ The Stipulation resolves the issue remarks and addresses the Objections.

5. Pursuant to the Stipulation, the following modifications should be made to claim 39F 211856-00:

Volume: 207.80 700.00 AC-FT

THE VOLUME OF THIS CLAIM HAS BEEN REDUCED TO THE 2.0 ACRE FEET PER ACRE GUIDELINE FOR WATER SPREADING. THE VOLUME MAY BE CONTESTED BY PROPER OBJECTION.

Maximum Acres: 306.00 103.80

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	37.00		SWSW	4	9S	60E	CARTER
2	32.80 36.00		SWSW	5	9S	60E	CARTER
3	1.20 30.00	N2SENE	NWNW	8	9S	60E	CARTER
4	10.00		SWNW	8	9S	60E	CARTER
5	6.80 20.00	N2SENE	SENE	8	9S	60E	CARTER
6	22.80 26.00		SWNW	9	9S	60E	CARTER
7	.40 8.00	NESWNE	SWNE	8	9S	60E	CARTER
8	2.80 6.00	E2SESE	SESE	8	9S	60E	CARTER
9	30.00		NENE	7	9S	60E	CARTER
10	30.00		SENE	7	9S	60E	CARTER
11	15.00		NESE	7	9S	60E	CARTER
12	40.00		NWSE	7	9S	60E	CARTER
13	30.00		NESW	7	9S	60E	CARTER
14	40.00		SENW	7	9S	60E	CARTER
15	40.00		SWNE	7	9S	60E	CARTER
Total:	306.00						

A map was attached to the Stipulation as Exhibit 2, showing the proposed place of use.

6. Pursuant to the Stipulation, Mary Lawrence and Edward Lawrence withdraw claims 39F 211857-00, 39F 212016-00, and 39F 212017-00.

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Claim 39F 211856-00 is a late claim. The late claim issue remark decreed on the claim gave notice that the claim could be subordinate, and therefore junior to certain permits and reservations of water. Any party asserting a superior claim to water based on a permit or reservation was required to file an objection to that late claim during the Basin objection period. Because no such objections were filed, this remark can now be removed.

RECOMMENDATIONS

1. Claim 39F 211856-00 should be modified as shown in Finding of Fact No. 5; and the issue remarks should be removed from the claim.

2. Claims 39F 211857-00, 39F 212016-00, and 39F 212017-00 should be dismissed as they have been withdrawn by the Claimants.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Edward Lawrence
Mary Lawrence
P.O. Box 63
Alzada, MT 59311-0063

Service via Electronic Mail

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK
BASIN 39F

Water Right Number: 39F 211856-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners:

MARY LAWRENCE
PO BOX 63
ALZADA, MT 59311 0063

EDWARD LAWRENCE
PO BOX 63
ALZADA, MT 59311 0063

Priority Date: DECEMBER 10, 1896

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 08/16/1985 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

Volume: 207.60 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 103.80

Source Name: FIVEMILE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNW	9	9S	60E	CARTER

Period of Diversion: APRIL 15 TO AUGUST 15

Diversion Means: DIVERSION DAM

Period of Use: APRIL 15 TO AUGUST 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	37.00		SWSW	4	9S	60E	CARTER
2	32.80		SWSW	5	9S	60E	CARTER
3	1.20		N2SENE	8	9S	60E	CARTER
4	6.80		N2SENE	8	9S	60E	CARTER
5	22.80		SWNW	9	9S	60E	CARTER

6	0.40	NESWNE	8	9S	60E	CARTER
7	2.80	E2SESE	6	9S	60E	CARTER
Total:						
	103.80					

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

211856-00

212016-00

212017-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK
BASIN 39F

Water Right Number: **39F 211857-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Late Claim: B

Owners: MARY LAWRENCE
 PO BOX 63
 ALZADA, MT 59311 0063

 EDWARD LAWRENCE
 PO BOX 63
 ALZADA, MT 59311 0063

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF LITTLE MISSOURI RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK
BASIN 39F

Water Right Number: **39F 212016-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Late Claim: B

Owners:

MARY LAWRENCE
PO BOX 63
ALZADA, MT 59311 0063

EDWARD LAWRENCE
PO BOX 63
ALZADA, MT 59311 0063

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: FIVEMILE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK
BASIN 39F

Water Right Number: **39F 212017-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Late Claim: B

Owners:

MARY LAWRENCE
PO BOX 63
ALZADA, MT 59311 0063

EDWARD LAWRENCE
PO BOX 63
ALZADA, MT 59311 0063

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: FIVEMILE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.